IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1766 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KALAJI MATHURJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1766 of 2001

MR BHARAT T RAO for Petitioner No. 1-4

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/09/2001

ORAL JUDGEMENT

#. Heard Mr.B.T. Rao, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP for respondents - State. This Court has issued Rule made it returnable on 19th April, 2001 by order dated 9th April, 2001.

#. The brief giving rise to the present petition are as under :-

Out of the petitioners herein, the petitioner Nos.1 & 2 are the male legal heirs and representatives of the deceased - Mathurji Viraji. The petitioner Nos. 3 & 4 are the legal heirs and representatives of the deceased Ranchhodbhai Viraji Thakor and they are represented through their power of attorney holder Shri Naraynabhai Govindbhai Rabari. It is the case of the petitioners that Ranchhodbhai Viraji Thakor has two sons Nathaji and Mathurji, both have died and therefore the names of the widows of Nathaji and Mathjurji viz. Gajiben, widow of Mathurji and Siviben, widow of Ghabhaji have been mutated in the Revenue Record of the land in question. It is also submitted that the petitioners Nos.1 & 2 are the owners of the City Survey No.179/3 and 179/4 of Moje Ranip admeasuring 3946 sq.mtrs of the land and petitioners Nos.3 & 4 are the owners of the City Survey No.178/1 and 178/2 admeasuring 4047 sq.mtrs of the land. It is the case of the petitioners that they have got these lands by natural succession on account of death of their forefathers and they have become the absolute owners of the aforesaid lands by virtue of succession as Class-I heirs. It is further submitted that despite of the fact that the lands belong to the petitioner, who are the original owners of the land which they have inherited from their forefathers, the City Mamlatdar without initiating any proceedings under Section 135[D] of the Bombay Land Revenue Code, 1897 has made entry in the revenue record that the lands are `new tenure lands'. IT is case of the petitioners that the petitioners came to know this fact only when they had made applications to convert the lands from Agricultural land to non agricultural lands. Therefore, the petitioners have made application to delete the word `new tenure lands' from the revenue record but according the petitioners, the respondent Nos.2 & 3 failed to accede the request and insisted for premium at the market value which is otherwise not payable by the petitioners because they have acquired the lands by natural course from their forefathers and in support of this fact, the petitioners have relied upon the revenue records commencing from 1939. It is also case of the petitioners that the respondents had carried out the entry without following due procedure of law as provided under Bombay Land Revenue Code and according to the petitioners, the petitioners have acquired the lands through succession as Class-I heirs. It is also case of the petitioners that inspite of the applications submitted by the petitioners

to delete the said entry, no reply nor any response has been given by the respondent No.2 & 3 and according to the petitioners, the respondent Nos.2 & 3 are harassing the petitioners by not giving any response to their applications. It is also case of the petitioners that though the petitioners have drawn the attention of the respondent Nos.2 & 3 that in similar matters, orders passed by the concerned authority with respect to respective lands but so far the case of the petitioners are concerned, no order has been passed by the respondent Nos.2 & 3. Therefore, the petitioners have approached this Court directly on the ground of inaction on the part of the respondent Nos.2 & 3 with prayer before this Court to set aside the entry No.1000 made in the revenue record in respect of the lands in question. The petitioners have also drawn the attention of this Court to decision in Special Civil Application No.10779 / 1998 so also to some other decisions rendered by this Court.

#. I have heard Mr.B.T.Rao, learned advocate for the petitioners and Mr.S.P.Sen, learned AGP on behalf of the respondents. Mr.Rao, learned advocate has submitted that first application has been submitted by the petitioners before the respondent No.3 on 12th August, 1999 requesting the authority to delete the entry No.1000 made in the revenue record in respect of the land in question and record the land as old tenure land. This application remained unanswered and no decision has been taken by the respondent No.3. Similarly, on the same day i.e. on 12th August, 1999 another application has been filed by Kalaji Mathurji and Mangaji Mathurji to the respondent No.3 with a request to delete the entry of new tenure and exercise the powers under Section 197 of Bombay Land Revenue Code. Thereafter, the petitioners again approached the authority with an application dated 5th July, 2000 requesting to consider earlier application for deleting the entry of new tenure in respect of the land in question. Therefore, Mr.Rao, learned advocate has submitted that the respondent No.3 is entitled to exercise the powers under Section 197 of the Bombay Land Revenue Code after considering relevant records and to pass appropriate orders but despite, number of requests though made by the petitioners, no order has been passed by the respondent No.3 and therefore, he submitted that some suitable directions may be issued to the respondent No.3 to decide said application submitted by the petitioners after giving due opportunity of hearing.

#. Learned AGP Mr.S.P.Sen appearing on behalf of the respondents - State has submitted that if application dated 12th August, 1999 and 5th July, 2000 submitted by

the petitioners are still pending with the concerned respondent authority, in that case, the concerned authority will certainly consider said applications of the petitioners in accordance with law provided, the petitioners will produce necessary evidence to prove their case that the lands in question belong to old tenure.

#. In light of above submissions made by the learned advocates for the parties, this Court is of the considered opinion that if some suitable directions are issued to the respondent No.3 to decide the application submitted by the petitioner, within some reasonable period after giving an opportunity of hearing to the petitioners to produce all the relevant records, will certainly meet the ends of justice.

#. In above view of the matter, it is directed to the petitioners to produce all the relevant records in support of the application submitted by the petitioners before respondent No.3 along with the relevant decisions relied upon by the petitioners, within 15 days from today. As and when such application along with relevant record and evidence is produced before the respondent No.3, the respondent No.3 is directed to consider the application dated 12th August, 1999 and 5th July, 2000 along with all the relevant records and evidence along with decisions that may be relied on by the petitioners and after giving an opportunity of hearing to the petitioners, shall pass necessary orders in accordance with law within one month from the date of receiving such record from the petitioners.

#. However, it is observed that in case of any difficulty, it is open for the petitioners to revive this petition by merely filing a note before the Registry of this Court. In light of above observations and directions, present petition is disposed of accordingly. Rule is discharged accordingly. D.S.Permitted.

Date : 13-9-2001 [H.K.Rathod, J.]

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